IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 260 of 2006 (S/B)

Date of decision: 26th February, 2007

A.F.R. (Approved for reporting)

~~Not approved for Reporting~~

Date Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for Signature.

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 260 of 2006 (S/B)

Mohar Singh Chauhan S/o Late Sri Mahant Ram,
Presently posted as Section Officer,
Office of DIG, S.S.B. Sector Head Quarter.
Ranikhet (Uttaranchal). ……. Petitioner

Versus

1. Union of India through Secretary,
   Ministry of Home Affairs,
   New Delhi.
2. The Director General,
   S.S.B., R.K. Puram,
   New Delhi 110066.
3. Inspector General, Frontier Head Quarter,
   S.S.B. Lucknow (U.P.).
4. Deputy Inspector General,
   S.S.B. Sector Head Quarter,
   Ranikhet, Sevapuram Gamiadeoli,
   Uttaranchal 263645.
5. Sri N.R. Verma, Accounts Officer,
   S.S.B. Sector Head Quarter,
   Sevapuram,
   Ranikhet- 263645. ……. Respondents

Mr. S.N. Babulkar, Senior Counsel with Mr. Tumul Nailwal, Advocate for the petitioner.
Mr. Arvind Vashishth, Assistant Solicitor General for respondents Nos. 1 to 4.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

RAJEEV GUPTA, C. J. (Oral)

Mr. S.N. Babulkar, Senior Counsel with Mr. Tumul Nailwal, Advocate for the petitioner.

Mr. Arvind Vashishth, Assistant Solicitor General for respondents Nos. 1 to 4.

2. They are heard.

3. In the short counter affidavit filed on behalf of respondents Nos. 1 to 4, a preliminary objection has been raised about the

maintainability of the writ petition on the ground that the petitioner, working as a civilian, has a remedy to approach the Central Administrative Tribunal by filing O.A. for the redressal of the grievances projected in this writ petition.

4. Mr. S.N. Babulkar, the learned Senior Counsel for the petitioner does not dispute that the petitioner can approach the Central Administrative Tribunal for the redressal of the grievances projected in the writ petition. The learned Senior Counsel, however, submitted that as the writ petition has already been admitted for hearing and the petitioner's claim in the writ petition is mainly based on the alleged violation of the provisions of law, the petitioner may not be relegated to avail the alternative remedy before the Central Administrative Tribunal.

5. The apex Court, in the case of **L. Chandra Kumar Vs. Union of India and others** reported in **(1997) 3 SCC 261,** observed in para 99:

> "99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under. Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Article 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. <u>All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals</u>

> will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

6. From the above-quoted para 99 of the Apex Court dictum, it is apparent that the Tribunals will continue to act like courts of first instance in respect of the areas of law for which they have been constituted and it will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations.

7. In this view of the matter, the writ petition is liable to be dismissed and is hereby dismissed.

8. The petitioner, however, shall be at liberty to file O.A. before the Central Administrative Tribunal for the redressal of his grievances projected in the writ petition.

9. With the above order, CLMA No. 10405 of 2006 and I.A. No. 753 of 2006 also stand disposed of.

(J.C.S. Rawat, J.) **(Rajeev Gupta, C. J.)**
26.02.2007 26.02.2007

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